

**REMARKS**

Reconsideration of this application is requested.

The Examiner's objections to claims 2 and 5-8 have been obviated by rewriting these claims as claims 14-18, respectively. The new claims all depend, directly or indirectly, from claim 10.

Claim 10 has been amended in a way which is thought to emphasize unique aspects of the applicant's invention. As the applicant's specification shows, the invention is dependent on the applicant's finding that a cinnamon flavor can be obtained by using mixtures of cinnamic alcohol and eugenol without requiring the use of cinnamic aldehyde (see, for example, the first and second ¶s, page 2 of applicant's specification). As disclosed by the applicant at page 1, 3rd ¶ of his specification, cinnamic aldehyde has sensitizer properties which limit its use for cinnamon flavor purposes. There is nothing in the prior art suggesting the applicant's finding that a highly useful cinnamon flavor can be obtained by using a mixture of cinnamic alcohol and eugenol as defined in applicant's main claim 10, i.e. with no or substantially no cinnamic aldehyde.

Stated otherwise, the applicant's invention resides in finding a cinnamon flavor composition which matches the desirable hedonics of cinnamic aldehyde while using no or substantially no cinnamic aldehyde. This finding is of importance because it enables one to avoid the sensitizer problems which restrict the use of cinnamon flavor compositions based on cinnamic aldehyde.

The Examiner will appreciate that matching a flavor profile is a precise business. If a flavor match requires eugenol, then the flavorist uses eugenol and not something else (e.g. clove oil) which contains eugenol. This is because the other components of the clove oil may affect the hedonic profile to an extent that one no longer could match cinnamic aldehyde. In the circumstances, it is not at all consistent with the knowledge and thinking of the art to say, as the Examiner has done, that eugenol and clove oil are synonymous for the purpose of creating of flavors, particularly cinnamon flavor. Eugenol and clove oil (even if the latter contains eugenol) are not equivalents or obviously interchangeable if one is trying, as in the applicant's case, to provide a cinnamon flavor composition that matches the flavor obtainable with cinnamic aldehyde. This is discussed more fully below in connection with the Examiner's Section 103(a) rejection of claims 2, 5, 8 and 10-13 based primarily on Witkewitz et al. (U.S. 5,087,458) in view of Barcelon (U.S. 4,820,544) and the Section 103(a) rejection of claims 6 and 7 based on Witkewitz et al., Barcelon and Cherukuri (U.S. 5,556,652). With respect, it is submitted that the

references do not make the applicant's invention obvious. Accordingly, reconsideration of the Examiner's Section 103(a) rejections is requested.

Witkewitz is concerned with providing a solution of oleoresin black pepper and either cinnamyl alcohol or phenylethyl alcohol for addition to chewing gum. Witkewitz notes that the invention is based on the discovery of two agents for solubilizing oleoresin black pepper, namely, cinnamyl alcohol and phenylethyl alcohol (Col. 1, lines 30-36). The use of cinnamyl alcohol as the solubilizing agent is said to be particularly advantageous as it not only avoids diluting the chewing gum's flavor but actually enhances the cinnamon flavor of the chewing gum (Col. 1, lines 37-41).

The Examiner recognizes that Witkewitz does not disclose the use of eugenol with the cinnamyl alcohol. However, the Examiner has filled in this deficiency of Witkewitz by noting that Barcelon et al. teach that clove oil is a common source of eugenol and that clove oil can be used in place of eugenol in the preparation of his candy composition. The Examiner concludes from this that it would be obvious to one of ordinary skill in the art at the time of the applicant's invention to use eugenol or clove oil as taught by Barcelon as the liquid flavoring agent in the chewing gum composition containing cinnamyl alcohol as taught by Witkewitz. The Examiner goes on to say "One of ordinary skill in the art would have been motivated to use the clove oil or eugenol as the liquid flavoring agent in the chewing gum composition comprising cinnamyl alcohol in order to provide a cinnamon and clove flavored chewing gum. One of ordinary skill in the art would have a reasonable expectation of success in using the clove oil or eugenol as the liquid flavoring agent because Witkewitz et al. teach clove oil is an acceptable flavoring agent and Barcelon et al. teach clove oil contains primarily eugenol."

With respect, it is submitted that there is no basis in the art to support the Examiner's position. For one thing, Witkewitz primarily uses his cinnamyl alcohol as a solvent. Witkewitz says nothing about using clove oil for any purpose, much less to produce a cinnamon flavored product which is free, or substantially free, of cinnamic aldehyde.

The applicant submits that there is no real basis for considering Barcelon with Witkewitz but, if this happened, the most likely thing would be to replace Witkewitz' solvent with clove oil. Clearly, there is nothing in the references suggestive of the applicant's invention. The Examiner's position is based on the assumption that it would be obvious to use the Barcelon clove oil in Witkewitz but, in reality, why would this be done? There is absolutely nothing in Witkewitz suggesting the possible addition of clove oil to the Witkewitz compositions and there is certainly no motivation

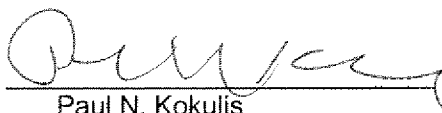
in the art to make "a cinnamon and clove flavored chewing gum" as the Examiner suggests. This sort of gum would call for a highly unlikely chewing gum flavor. More importantly, Witkewitz, as noted, primarily uses the cinnamic alcohol as a solvent, not for its hedonic properties. Hence there is no art motivation to make the modifications in Witkewitz that are required to reach the applicant's invention. In fact, cinnamic alcohol has a rather weak odor preventing its broad applicability across a palette of flavors. That is precisely the point behind the present invention: If cinnamic alcohol was a desirable flavorant, then the present inventors would not be looking to combine it with eugenol to mimic cinnamic aldehyde. Stated otherwise, the flavorist would simply use cinnamic alcohol and not have to concern himself with the complexity of creating unique and highly useful mixtures.

In short, the present invention does not reside in making a cinnamon/clove oil flavor, it resides in creating the hedonics of a material (cinnamic aldehyde) from two different starting materials, viz cinnamic alcohol and eugenol to provide a useful cinnamon flavor while avoiding the difficulties encountered with cinnamic aldehyde. Cinnamic aldehyde is an extremely tricky target hedonic and it is surprising that eugenol modifies the weak, spicy notes of cinnamic alcohol in the direction of cinnamic aldehyde to provide the results sought by the applicant. Witkewitz simply does not teach that eugenol can modify cinnamic aldehyde hedonics in this direction. The same is true for Barcelon et al. Furthermore, Cherukuri et al., used by the Examiner in combination with Witkewitz and Barcelon to reject claims 6 and 7, do not fill in the substantive deficiencies noted above with respect to Witkewitz and Barcelon. Accordingly, reconsideration of the Examiner's Section 103(a) rejections of the applicant's claims as set out in Sections 7 and 8 of the action is requested, with allowance of the claims.

Favorable action is solicited.

Respectfully submitted,

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